

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:08-CR-00060-F-1

No. 5:16-CV-00506-F

TIMOTHY TYRONE HORTON,	)	
Petitioner,	)	
	)	
v.	)	<u>ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

This matter is before the court on Timothy Tyrone Horton's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-180]. The issues have been fully briefed, and the matter is now ripe for ruling. For the reasons more fully stated below, Horton's Motion to Vacate is ALLOWED.

In Horton's Motion to Vacate, he argues that he is no longer an armed career criminal as a result of *Johnson v. United States*, 135 S. Ct. 2551 (2015). Mot. Vacate [DE-180] at 4. In particular, Horton contends that his North Carolina convictions for common law robbery and attempted common law robbery are no longer valid predicate convictions for the Armed Career Criminal Act ("ACCA"). *Id.*

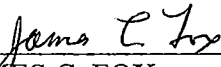
The Government agrees that in light of *Johnson* and *United States v. Gardner*, 823 F.3d 793 (4th Cir. 2016), Horton is no longer an armed career criminal under 18 U.S.C. § 924(e). Resp. [DE-184] at 2. The Government concludes that Horton's sentence should be vacated, and he should be resentenced. *Id.*

In light of the foregoing, including the Government's concessions, Horton's Motion to Vacate [DE-180] is ALLOWED. Horton's December 14, 2010 Judgment [DE-111] of

conviction and sentence hereby is VACATED, and he is to be promptly resentenced without the § 924(e) enhancement.

SO ORDERED.

This, the 5<sup>th</sup> day of August, 2016.

  
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JAMES C. FOX  
Senior United States District Judge